

§ 20.2056(c)-3 Marital deduction; definition of “passed from the decedent to a person other than his surviving spouse”.

The expression “passed from the decedent to a person other than his surviving spouse” refers to any property interest which, under the definition stated in § 20.2056(c)-1 is considered as having “passed from the decedent” and which under the rules referred to in § 20.2056(c)-2 is not considered as having “passed from the decedent to his surviving spouse.” Interests which passed to a person other than the surviving spouse include interests so passing under the decedent’s exercise, release, or nonexercise of a nontaxable power to appoint. It is immaterial whether the property interest which passed from the decedent to a person other than his surviving spouse is included in the decedent’s gross estate. The term “person other than his surviving spouse” includes the possible unascertained takers of a property interest, as, for example, the members of a class to be ascertained in the future. As another example, assume that the decedent created a power of appointment over a property interest, which does not come within the purview of § 20.2056(b)-5 or § 20.2056(b)-6. In such a case, the term “person other than his surviving spouse” refers to the possible appointees and possible takers in default (other than the spouse) of such property interest. Whether or not there is a possibility that the “person other than his surviving spouse” (or the heirs or assigns of such person) may possess or enjoy the property following termination or failure of the interest therein which passed from the decedent to his surviving spouse is to be determined as of the time of the decedent’s death.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(d)-1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.

Rules pertaining to the application of section 2056(d), including certain transition rules, are contained in §§ 20.2056A-1 through 20.2056A-13.

[T.D. 8612, 60 FR 43538, Aug. 22, 1995]

§ 20.2056(d)-2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) *Disclaimer by a surviving spouse.* If a surviving spouse disclaims an interest in property passing to such spouse from the decedent, which interest was created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the interest occurs, see § 25.2518-2(c)(3) and (c)(4) of this chapter. If a qualified disclaimer is determined to have been made by the surviving spouse, the property interest disclaimed is treated as if such interest had never been transferred to the surviving spouse.

(b) *Disclaimer by a person other than a surviving spouse.* If an interest in property passes from a decedent to a person other than the surviving spouse, and the interest is created in a transfer made after December 31, 1976, and—

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest; and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see § 25.2518-2(c)(3) and (c)(4) of this chapter.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

[T.D. 8095, 51 FR 28368, Aug. 7, 1986. Redesignated by T.D. 8612, 60 FR 43538, Aug. 22, 1995, as amended by T.D. 8744, 62 FR 68184, Dec. 31, 1997]

§ 20.2056(d)-3 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.

(a) *Disclaimer by a surviving spouse.* If an interest in property passes to a decedent’s surviving spouse in a taxable transfer made by a decedent dying before January 1, 1977, and the decedent’s surviving spouse makes a disclaimer of this property interest the disclaimed

interest is considered as passing from the decedent to the person or persons entitled to receive the interest as a result of the disclaimer. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. It is, therefore, necessary to distinguish between the surviving spouse's disclaimer of a property interest and such surviving spouse's acceptance and subsequent disposal of a property interest. For example, if proceeds of insurance are payable to the surviving spouse and the proceeds are refused so that they consequently pass to an alternate beneficiary designated by the decedent, the proceeds are considered as having passed from the decedent to the alternate beneficiary. On the other hand, if the insurance company is directed by the surviving spouse to hold the proceeds at interest during such spouse's life and, upon this spouse's death, to pay the principal sum to another person designated by the surviving spouse, thus effecting a transfer of a remainder interest, the proceeds are considered as having passed from the decedent to the surviving spouse. See paragraph (c) of § 20.2056(e)-2 with respect to a spouse's exercise or failure to exercise a right to take against a decedent's will.

(b) *Disclaimer by a person other than a surviving spouse*—(1) *Decedents dying after October 3, 1966 and before January 1, 1977.* This paragraph (b)(1) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after October 3, 1966 and before January 1, 1977. If a surviving spouse is entitled to receive property from the decedent as a result of the timely disclaimer made by the disclaimant, the property received by the surviving spouse is to be treated as passing to the surviving spouse from the decedent. Both a disclaimer of property passing by the laws of intestacy or otherwise, as by insurance or by trust, and a disclaimer of bequests and devises under the will of a decedent are to be fully effective for purposes of computing the marital deduction under section 2056. A disclaimer is a complete and unqualified refusal to accept some or all of the rights to which one is entitled. It must be a valid refusal under State law and

must be made without consideration. For example, a disclaimer for the benefit of a surviving spouse who promises to give or bequeath property to a child of the person who disclaims is not a disclaimer within the meaning of this paragraph (b)(1). The disclaimer must be made before the person disclaiming accepts any property under the disclaimed interest. In the case of property transferred by a decedent dying after December 31, 1970, and before January 1, 1977, the disclaimer must be made within 9 months after the decedent's death (or within any extension of time for filing the estate tax return granted pursuant to section 6081). In the case of property transferred by a decedent dying after October 3, 1966, and before January 1, 1971, the disclaimer must be made within 15 months after the decedent's death (or within any extension of time for filing the estate tax return granted pursuant to section 6081). If the disclaimer does not satisfy the requirements of this paragraph (b)(1), for the purpose of the marital deduction, the property is considered as passing from the decedent to the person who made the disclaimer as if the disclaimer had not been made.

(2) *Decedents dying after September 30, 1963 and before October 4, 1966.* This paragraph (b)(2) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after September 30, 1963 and before October 4, 1966. If, as a result of the disclaimer by the disclaimant, the surviving spouse is entitled to receive the disclaimed property interest, then such interest shall, for the purposes of this paragraph (b)(2), be considered as passing from the decedent to the surviving spouse if the following conditions are met. First, the interest disclaimed was bequeathed or devised to the disclaimant. Second, the disclaimant disclaimed all bequests and devises under the will before the date prescribed for the filing of the estate tax return. Third, the disclaimant did not accept any property under the bequest or devise before making the disclaimer.

The interests passing by disclaimer to the surviving spouse under this paragraph (b)(2) are to qualify for the marital deduction only to the extent that,